IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

CRL.A.No. 782 of 1998()

CC.1/1996 of ENQUIRY COMMR. & SPL. JUDGE, THRISSUR

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APPELLANTS:

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1. BABY VARKEY, FORMER PRESIDENT,
ERATTAYAR PANCHAYAT.

2. A.J. FRANCIS, FORMER VICE-PRESIDENT,
ERATTAYAR PANCHAYAT.

3. P.K.NARAYANA PILLAI, FORMER MEMBER,
WARD NO.6, ERATTAYAR PANCHAYAT.

BY ADV. SRI.V.V.RAJA
SRI.M.T.SURESHKUMAR

RESPONDENT:

STATE OF KERALA REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, ALONG WITH CRA NO. 784 OF 1998 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V.RAMKUMAR, J.

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Crl.Appeal Nos. 782 and 784 of 1998

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Dated: 20-06-2007

JUDGMENT

The appellants in Crl.Appeal 782/1998 are accused Nos. 2 to 4 and the appellant in Crl.Appeal No. 784 of 1998 is the first accused in C.C. No.1/1996 on the file of the Enquiry Commissioner and Special Judge, Thrissur.

2. The case of the prosecution can be summarised as follows:-

A1 to A4 who were public servants while working as Executive Officer Gr.I, President, Vice President and member of Ward VI respectively of Erattayar Panchayath in Idukki District, by abusing their official position as such public servants and the 5th accused while working as Manager , TAS Consultants and Architects, Central Junction, Kumili, in furtherance of their common intention during the period from 21-2-1991 to 30-10-1991, forged documents and converted for their own use a sum of Rs. 17,574.15 paise by recording false measurements of earthwork "M Book" (Measurement Book) No. 1/91-92 in relation

to Chembakappara Kochu Kamakshi road, another sum of Rs. 4,4395/- by making use of false bill and receipt dated 26-10-1991 and 30-10-1991 respectively issued by A5 towards road rolling work and still another sum of Rs. 950/- by forging an agreement and a receipt dated 30-10-1991 in the name of P.W.4 (Beenamol) and thus misappropriated a total amount of Rs. 22,919.15 committing breach of trust reposed in the said public servants. The accused have thereby committed offences punishable under Sections 13 (2) read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 468, 471 and 409 read with Sec. 34 I.P.C.

3. On the accused pleading not guilty to the charge framed against them by the court below, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 16 witnesses as P.Ws 1 to 16 and got marked 33 documents as Exts.P1 to P33.

4. After the close of the prosecution evidence, the accused were questioned under Sec. 313 (1) (b) Cr.P.C. with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those

circumstances and maintained their innocence.

5. When called upon to enter on their defence and to adduce evidence in support of their case, the accused examined two witnesses as DWs 1 and 2. Exts. D1 to D4 are the case diary contradictions of P.Ws 2, 3, 5 and 12 respectively.

6. The learned Special Judge, after trial, as per judgment dated 9-9-1998 acquitted the 5th accused but convicted accused Nos. 1 to 4 of the offences charged against them. For the conviction under Section 13 (2) read with Sec. 13 (1) (c) and 13 (1) (d) of the P.C. Act and Sections 468, 471 and 401 I.P.C. accused Nos. 1 to 4 were each sentenced to rigorous imprisonment for one year. The substantive sentences of imprisonment were directed to run concurrently. It is the said judgment which is assailed in this Appeal.

7. I heard Adv. Sri. B. Raman Pillai, the learned counsel for the appellant in Crl. Appeal 784 of 1998 and Adv. Sri. M.T. Sureshkumar, the learned counsel appearing for the appaellants in Crl. Appeal No. 782 of 1998 and Adv. Sri.K.S.Sivakumar, the learned Public Prosecutor, who defended the State.

8. The only point which arises for consideration in these

Appeals is as to whether the conviction entered and the sentence passed against the appellants are sustainable or not ?

THE POINT:

9. Adv. Sri.K.S.Sivakumar, the learned Public Prosecutor made the following submissions before me in support of the judgment under Appeal:-

The accused prepared a false receipt for having paid Rs. 950 by way of supervision charges to an Engineer by name Beenamol (P.W.4). But P.W.4 has denied having been engaged to do any supervising work. She has also denied receipt of any amount under Ext.P4 receipt the signature in which has also been denied by her. She has further deposed that her address shown in Ext.P4 is not correct. This means that Rs. 950/- which was shown as having disbursed to P.W.4 by way of supervision charges was, in fact, not paid to P.W.4. The accused have thus misappropriated the said amount by dishonest means. The offence under Sec. 409 I.P.C. is clearly made out since Ext.P18 minutes of the Erattayar Panchayath Sub Committee shows that the first accused who was the then Executive Officer of the Erattyar Panchayath was entrusted with the sum of Rs. 4,395/- to be disbursed to the 5th accused by way of hire charges of the road roller. It is true that the trial court has found that there was no evidence to prove payment of the said charges to the 5th accused. Whether A5 was paid or not, A1 was entrusted with the

amount for making payment to A5 and the evidence clearly shows that no road rolling work was done prior to 24-2-1992 which was the date of surprise inspection whereas the bill dated 26-10-1991 and the receipt dated 30-10-1991 obtained in Ext.P21 voucher file would go to show that documents were fabricated so as to make it appear that amounts which A1 was entrusted with were paid to A5 without even doing any road rolling work. Thus the offence in respect of Rs. 4,395/- has clearly been proved.

10. I am afraid that I find myself unable to agree with the above submissions made on behalf of the prosecution.

11. Accused Nos. 1 to 4 who are respectively the Executive Officer, Gr.I, President, Vice President and member of Ward No. VI respectively of Erattayar Panchayath in Idukki District. The 5th accused was the Manager of a private firm by name TAS Consultants and Architects at Kumili. The case of the prosecution is that during the period between 21-2-1991 and 30-10-1991 the five accused persons in furtherance of their common intention and A1 to A4 who were public servants by abusing their official positions forged documents and converted for their own use an amount of Rs. 22,919.15 under three different heads. As per the court charge the accused were called upon to answer the

following charges :-

1. *The accused misappropriated and converted for their own use a sum of Rs. 17,574.15 by committing breach of trust and recording false measurements of earth work in Measurement Book No. 1/91-92 in respect of the Chembakappara Kochu Kamakshi road.*

2. *The accused misappropriated and converted for their own use a sum of Rs. 950/- by committing criminal breach of trust forging an agreement and a receipt dated 30-10-1991 in the name of P.w.4 (Beenamol).*

3. *The accused misappropriated and converted for their own use by committing criminal breach of trust in respect of a sum of Rs. 4,395/- by making use of a false bill and a false receipt dated 20-6-1991 and 30-10-1991 respectively in favour of the 5th accused by way of road rolling work without doing any such work.*

12. Out of the aforesaid three specific charges the court below acquitted the accused of the charge in respect of Rs. 17, 574.15. The 5th accused was acquitted holding that there was no evidence of the 5th accused having received the sum of Rs. 4,395 towards road rolling work. Rest of the accused were, however, found guilty of charges 2 and 3 referred to above. With regard to

the acquittal of the 5th accused of all the charges and the acquittal of the accused Nos. 1 to 4 of the charge relating to Rs. 17574.15, the State has not preferred any appeal. Hence the only two charges which survive in these appeals are regarding the charge in respect of Rs. 950/- and the other charge in respect of Rs. 4,395/-.

13. I will first consider the charge pertaining to the alleged misappropriation of Rs. 950/-. The specific case of the prosecution is that accused Nos. 1 to 4 misappropriated the said amount by forging an agreement and receipt dated 30-10-1991 in the name of P.W.4 (Beenamol) an Engineer by way of supervision charges, without actually paying the said amount to P.W.4. Eventhough P.W.4 (Beenamol) denied her signatures in Ext.P4 receipt for Rs. 950/- and Ext.P5 application requesting her employment in the Erattayar Panchayath as a Consultant Engineer and also Ext.P6 agreement with the said Panchayath for preparing estimate and supervising the work and also the signature on the reverse of Ext.P7 cheque leaf, P.W.11 who was the proprietor of Builton Engineers would say that the signature in Ext.P4 receipt is that of P.W.4 and that it was he who affixed the

seals in Exts.P5 and P6, that PWs 4 and 5 who are graduate Engineers used to come to his establishment and he used to entrust work to them and that his seal is there on Ext.P4 receipt as well. He further admitted that he affixed his seal beneath the signature of P.W.4 in Exts.P4 and P6. If according to the prosecution P.W.4 was not engaged for supervising the work and the signatures inExts.P4, P5 and P6 are not that of hers , the testimony of P.W.11 is otherwise. Notwithstanding the fact that P.W.11 gave evidence against the prosecution case, for reasons best known to the prosecution, he was not declared hostile or cross-examined by the prosecution. In the face of the conflicting testimonies of P.Ws 4 and 11, the defence is certainly entitled to take advantage of the evidence of P.W.11 which is in their favour. If so, the case of the prosecution in this regard should fail.

14. What now survives for consideration is the charge pertaining to Rs. 4,395/-. The case of the prosecution in this behalf is that on the date of the surprise inspection conducted by P.W.1, the Executive Engineer, on 24-2-1992, as evidenced by Ext.P1 inventory and Ext.P2 surprise inspection report, there was no evidence of road rolling work done whereas a sum of Rs.

4395/- was shown as paid to the 5th accused by way of hire charges for road rolling work as evidenced by bill dated 26-10-1991 and receipt 30-10-1991 found in Ext.P21 voucher file. If, according to the prosecution, A1 to A4 in collusion with A5 had shared the said amount of Rs. 4,395/- after making forged bill and receipt for the said amount in favour of A5, A5 was necessarily a privy to the offence. However, the trial judge acquitted A5 holding that there was no evidence of A5 having received whole or part of the amount. A perusal of the exhibits relied on by the prosecution in this connection will go to show that documents were prepared on the eve of 31-10-1991 evidencing payment of money. The learned counsel for the appellants brought to my notice a Government Order issued by the Local Self Government Department as G.O.(Rt) No. 2631/91 LSGD dated 25-7-1991 extending upto 31-10-1991 the period for expending the untied funds by the Panchayaths in the State. This explains the anxiety on the part of A1 to A4 to expend the amount on or before 31-10-1991. No doubt, this Government Order was not marked as an exhibit in the case. But the learned Public Prosecutor also did not dispute the existence of the said

Government Order regarding which this court is entitled to take judicial notice in view of Sec. 57 of the Evidence Act. (Vide Executive Officer, Chalakudy Panchayat v. V.P. Devassy - 1970 KLT 991) (FB) and Assistant Collector of Central Excise v. Vasanthakumar - 1988 (1) KLT 92). Eventhough it is remarked in Ext.P2 inspection report of P.W.1 that on 24-9-1992 when the surprise inspection was conducted there was no evidence of road rolling work, going by the documents evidencing payment in the month of October 1991, the road rolling work, if any, must have been done 4 months prior to the surprise inspection. A close reading of Ext.P2 report will show that the conclusion reached by P.W.1 that there was no road rolling work done was mainly due to the fact at the curves and corners the earth was loose. From that alone it is difficult to conclude that no road rolling was done. At any rate, P.Ws 2 and 3 have categorically admitted that road rolling work was done after 24-2-1992. This probabilises the defence argument that payment for the road rolling work might have been effected in advance before 31-10-1991 so that the funds in that behalf would not lapse. If as a matter of fact, road rolling work done as admitted by P.Ws 2 and

3, merely because the expenses of Rs. 4, 395/- was made before 31-10-1991 will not lead to the only conclusion that the said amount was misappropriated by A1 to A4 without actually doing the work. When the fact remains that road rolling work was, in fact, done at least after 24-2-1992, then necessarily payment in that behalf should have been given to A5 who even according to the prosecution had undertaken the work. The prosecution has no case that A5 did not do the work or that any other person had done the work. Similarly, the prosecution has no case that any other fund was utilised by A1 to A4 for the work. Since the money in that behalf had to be expended before 31-10-1991 it is quite probable that A1 to A4 had prepared documents evidencing disbursement of the money before 31-10-1991. When things were done in a transparent manner and there was also a committee of local people headed by a Christian Priest supervising the work, it cannot be said that the appellants had misappropriated the said amount.

15. The conviction entered and the sentence passed against the appellants overlooking these vital aspects of the matter cannot, therefore, be sustained and accordingly,

dislodged. The appellants are acquitted of the offences punishable under Sections 468, 471 and 401 I.P.C. and 13 (2) read with 13 (1) (c0 and 13 (1) (d) of the P.C. Act and are acquitted thereunder. They are set at liberty forthwith. Their bail bonds, if any, shall stand cancelled.

In the result, these appeals are allowed as above.

V.RAMKUMAR, JUDGE.

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RAMKUMAR, J.

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Crl.Appeal Nos.
782 and 784 of 1998

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Dated:20th June 2007

JUDGMENT